
(2006) 11 AP CK 0022
In the Andhra Pradesh High Court
Case No : Criminal A. No. 1005 of 2001

Voltas Ltd.

APPELLANT

Vs

Vidarbha Vehicles Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 140, 141, 142

Citation : (2007) 1 ALD(Cri) 557 : (2007) 4 BC 482 : (2007) 4 CivCC 519 :
(2007) CriLJ 596 : (2007) 3 RCR(Civil) 676 : (2007) 3 RCR(Criminal) 836

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : M.S. Ramchandra Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—When these Criminal Appeals were taken up for admission, this Court was pleased to issue notices to the respondents 1 to 3 and the office acknowledgment establishes that the notices were served on them. In spite of service of notice, the respondents have not put in their appearance. Subsequently, having heard Sri M. S. Ramachandra Rao, learned Counsel for the appellant, this Court came to the conclusion that there is a prima facie case in favour of the appellant and directed the learned Counsel for the appellant to cause fresh service of notice to the respondents. Accordingly, the learned Counsel took out notices, which were served on the respondents on 2-8-2006, but they have not chosen to put in their appearance either in person or through their counsel. Hence, this Court is inclined to dispose of these appeals after hearing the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the 4th respondent.

2. Respondents 2 and 3, who are the Directors of 1st respondent-company, issued four cheques in discharge of debt. When those cheques were bounced, the complainant i.e. the appellant herein filed two cases i.e. C.C. No. 78 of 1999 and

C.C. No. 83 of 1999 on the file of IV Metropolitan Magistrate, Hyderabad, and as the learned Magistrate acquitted the respondents-accused, the complainant preferred these Criminal Appeals. As the point involved in both the appeals is one and the same, they are taken up together for disposal by a common judgment.

3. For the sake of convenience, the parties are referred to as they were arrayed in the trial Court.

4. The complainant-company is involved in the manufacture of refrigerators, etc., A1 is an authorized dealer of the complainant, and A2 and A3 are the Directors of A1. During the course of business, the complainant supplied refrigerators to A1 from time to time on credit basis and thus, there is a running account between the parties. As there was an outstanding amount to be paid to the complainant, A2 and A3, on behalf of A1, issued four cheques bearing Nos. 727414, 727417, 727418 and 727420, dated 31-7-1998 for Rs. 26,118/-, Rs. 25,000/-, Rs. 25,000/- and Rs. 1,04,585.80 respectively drawn on Nagpur Nagarik Sahakari Bank Limited. When the complainant presented those cheques in State Bank of India, Commercial Branch, Hyderabad, they were returned with an endorsement "Account Expires". Pursuant to the bouncing of the cheques, the complainant issued a notice, dated 27-11-1998 as provided u/s 138 of Negotiable Instruments Act, 1881 (for brevity "the Act"). The respondents-accused, though received notices, did not choose to issue any reply notice, and hence, the complainant filed C.C. No. 78 of 1999 against the bouncing of cheques bearing Nos. 727417, 727418 and 727420 and C.C. No. 83 of 1999 against the bouncing of cheque bearing No. 727414. During the course of trial, the complainant got examined its Deputy Manager (Legal) as PW-1 and got marked Exs. P1 to P20. On behalf of the accused, A2, who is one of the Directors of A1, was examined as DW1 and Exs. D1 to D8 were marked. The Court below, on the strength of the evidence, framed the following points:

i) Whether the complaint has been filed on behalf of the complainant-company by an authorized person?

ii) Whether the legal notice Ex. P11 has been served on A1 to A3?

iii) Whether the cheque returned unpaid on the ground "account expires" amounts to dishonour of cheque as contemplated u/s 138 of the Act?

iv) Whether there is any legally enforceable debt between the complainant and A1 to A3 and if so, whether the cheques Exs. P2, P5 and P8 have been issued by A1 to A3 in discharge of such legally enforceable debt? On an analysis of the entire evidence on record and after hearing the arguments of the learned Counsel appearing on both sides, the Court below came to the conclusion that the legal notice issued under Ex. P11 was served on all the accused, the endorsement made by the banker i.e. "account expires" amounts to dishonour of cheque to attract the provisions of Section 138 of the Act and also gave a clear finding that there is a legally enforceable debt between the parties and the cheques were issued only in discharge of the legally enforceable debt. Though

the Court below answered three points in favour of the complainant, it gave a finding that Sri Y.S. Srinivas, who is the Deputy Manager (Legal) and was examined as PW-1, cannot be said to be an authorized person to represent the complainant and thus, the complaint is not maintainable. In the light of this finding, the learned Magistrate acquitted the accused.

5. Heard Sri M.S. Ramachandra Rao, learned Counsel for the complainant, the learned Additional Public Prosecutor appearing for the 4th respondent and perused the material placed on record.

6. The learned Counsel for the complainant has strenuously contended that it is not necessary that the Directors of the company should be examined to establish that it is the company, which has come up before the Court as the complainant. The General Power of Attorney (G.P.A.), which was issued in favour of PW-1 and marked as Ex. P1 is sufficient to hold that it is the company, which has come forward and filed the complaint. When once the said authorization is signed by the Vice President i.e. Sri Surya Narain Tripathi of the complainant, the Court below should have construed it as a proper authorization, but it interpreted the same in a wrong manner and acquitted the accused. As a measure of caution, the learned Counsel also filed a Miscellaneous Petition to receive certain documents i.e. Articles of Association of the complainant, Board Resolution dated 26-9-1994 and Power of Attorney, dated 24-11-1994 executed by the company in favour of authorized signatory on the G.P.A. i.e. Mr. Suyana Narain Tripathi as additional evidence.

7. Before deciding the case, it is necessary to refer to the objects and reasons for introduction of Section 138 of the Act. The menace of issuing cheques though the accounts are closed or there are no sufficient funds, etc. has become a routine in commercial transactions, and thus, it is creating a lot of inconvenience to the companies in whose favour, the cheques have been issued. Even if there is a promissory note executed for the very same amount, as the issuance of cheques is causing a lot of inconvenience and making the receivers of the cheques to suffer a serious set back, the legislature thought it fit to introduce certain provisions in the Act and in the context, the provisions of Sections 138 - 142 have been included in the Act. Pursuant to the introduction of the provisions of law, as and when complaints are received against bouncing of cheques, the Courts below are entertaining such complaints. When the receipt of complaints is in accordance with the provisions of Sections 138 and 142 of the Act, the High Courts and the Apex Court have gone into these aspects and laid down various propositions of law. In some of its judgments, the Supreme Court expressed its view that the cheque bouncing cases should be dealt with in a severe manner. In fact, in *Goa Plast (P) Ltd. Vs. Chico Ursula D'Souza*, the Apex Court observed as follows:

The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends

upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall, but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and (the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment, enacted the aforesaid provisions. The remedy available in a Civil Court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.

Coming to the point in issue, admittedly, one Y.S. Srinivas i.e. the Deputy Manager (Legal) was examined as PW-1 on behalf of the complainant-company and the G.P.A. issued by the Vice President of the complainant-company in his favour was marked as Ex. P1. There is no dispute that PW-1 is not the Deputy Manager (Legal) of the complainant-company and the G.P.A. was not in his favour. The only point agitated or urged by the respondents in the Court below is that the authorization cannot be accepted by the Court for the simple reason that Surya Narain Tripathi is not examined and no proof is filed establishing the fact that Tripathi is authorized to give G.P.A. in favour of the Deputy Manager (Legal) i.e. PW-1. It must be borne in mind that in cases of this nature, it is not as though the prosecution must come forward and establish the guilt of the accused by producing the evidence with preponderance of probabilities and it is enough if it states that there is a cheque and the said cheque is bounced, the Courts can definitely draw a presumption that there is a debt in view of Section 139 of the Act. When once the complainant has come forward and discharged the burden as stated above, it is for the accused to establish that the said cheque was not issued by them and even if issued, it was not in view of the legally enforceable debt.

8. In criminal jurisprudence, anyone can set the criminal law in motion by filing a complaint of facts constituting an offence and the Magistrate, before whom such complaint is filed, is entitled to take cognizance.

In fact, in a judgment reported in *Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot Vs. O.P. Poddar and Others*, , the Apex Court held to the following effect:

No Court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It was further held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. The only eligibility criterion prescribed by Section 142 of the Act is that the complaint must be by the payee or the holder in due course. When once this criterion is satisfied, it must be construed that the

complaint is in the name and on behalf of the appellant-complainant.

Keeping the above principle in mind, when this Court looks into the case on hand, it is clear that the complainant is M/s. Voltas Limited, Administrative Office at Allwyn Bhavan, Erragadda, Hyderabad, which means, it is by the company itself, but not by Y.S. Srinivas. Of course, if the complaint is filed by Y.S. Srinivas, who is the Deputy Manager (Legal) of M/s. Voltas Limited, it is altogether a different case. Of course, the complainant-company did not adduce any evidence establishing the fact that the G.P.A. given to Y.S. Srinivas, who happened to be the Deputy Manager (Legal) of the complainant-company, is by a competent person. In this regard, the learned counsel, as stated supra, filed certain documents such as Articles of Association of the Company, Board Resolution dated 26-9-1994 and also the General Power of Attorney, dated 24-11 -1994 executed by the company in favour of Surya Narain Tripathi. In the light of these documents, it can safely be construed that the G.P.A. issued by Tripathi is only by and on behalf of the company and no other conclusion can be arrived at.

9. Another aspect is that M/s. Voltas Limited is a company and a juristic person, it cannot approach a Court of law and make a complaint on its own and it must definitely be represented by an authorized person. No doubt, in the instant case, M/s. Voltas Limited is represented by its Deputy Manager (Legal) i.e PW-1 and it is not as though he alone should represent the company throughout i.e. till the case is ended. There is a possibility of the said person leaving the organization, or the company giving G.P.A. to another Manager, etc. In those cases, the Courts shall not insist upon the person in whose favour G.P.A. was issued earlier. After all, these provisions are enabling provisions, which were introduced in view of the plight of the persons in whose favour cheques are issued and bounced. In a judgment reported in Associated Cement Co. Ltd. Vs. Keshvanand, , the Apex Court held that "the complainant has to be a corporeal person who is capable of making a physical appearance in the Court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the Court. It is held that the Court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complaint to represent the former in Court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant-company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even presuming that initially there was no authority, still the Company can, at any stage, rectify that defect. At a subsequent stage, the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground". The said view was reiterated by the

Apex Court in M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, . In the light of the above discussion, this Court has no hesitation to come to the conclusion that the trial Court erred in coming to the conclusion that the complaints filed are not by the authorized person and thus, they are not maintainable.

11. As the Court below came to the conclusion on other aspects that the cheques were issued in discharge of a legally enforceable debt and the legal notice was served on the accused, etc. and also in view of the finding arrived at by this Court that the complaints filed by the authorized signatory are in accordance with law, this Court has no option but to set aside the judgments impugned in these appeals, and accordingly, they are set aside.

12. In the result, the Criminal Appeals are allowed, and the accused, who are the respondents 1 to 3 herein are found guilty of the offence punishable u/s 138 of the Act and sentenced to suffer simple imprisonment for a period of one year and to pay a fine of Rs. 5000/- each.